of the solicitor is actually competing with the unsecured claims of third parties, as in bankruptcy proceedings, there seems no ground for depriving him of the advantage which his lien gives him. The tendency of some of the English cases to restrict the right to make the solicitor give up papers for use in litigation recognizes this. *In re Rapid Transit Co.*, [1909] 1 Ch. 96; *Boden* v. *Hensby*, [1892] 1 Ch. 101; *In re Capital Ins. Ass'n*, 24 Ch. D. 408.

RAILROADS — REGULATION OF RATES — POWER OF INTERSTATE COMMERCE COMMISSION OVER INTRASTATE RATES. — Section 15a of the Interstate Commerce Act, as amended by the Transportation Act of 1920, requires the Interstate Commerce Commission to prescribe rates so that the carriers as a whole or in groups shall earn an aggregate net income equal to a reasonable return on the aggregate value of their properties engaged in transportation. (41 STAT. AT L. 488.) Section 13 of the Act empowers the commission to fix intrastate rates when it finds such rates cause an undue discrimination against interstate commerce. (41 STAT. AT L. 484.) In conformity with the Act, the commission ordered increased passenger rates for the carriers in the group of which the Wisconsin carriers were a part. The Wisconsin Railroad Commission refused to grant this increased intrastate rate on the ground that a state statute prescribed a lower maximum. The Interstate Commerce Commission found that there was an undue discrimination against interstate commerce, and ordered the intrastate rates increased. The carriers filed a bill in equity to enjoin the state commission from interfering with this order. An interlocutory injunction was granted. The state commission appealed. *Held*, that the decree be affirmed. *Railroad Commission of Wisconsin* v. *Chicago, Burlington & Quincy Railroad Company*, U. S. Sup. Ct., Oct. Term, 1921, No. 206.

For a discussion of the principles involved, see NOTES, *supra*, p. 864.

SALES — IMPLIED WARRANTIES — PLACE AT WHICH GOODS MUST BE SALABLE. — The plaintiffs bought mineral waters from the defendants f. o. b. London, for resale, as the defendants knew, in Argentine. There was no reliance on the seller's judgment. The goods were analyzed on their arrival in Argentine by the government and found to contain salicylic acid and, therefore, were unsalable under Argentine laws. The plaintiff sues for a breach of the seller's implied warranty of merchantability. *Held*, that the warranty of merchantability did not embrace legal salability. *Sumner, Permain & Co.* v. *Webb*, [1922] 1 K. B. 55.

Goods merchantable at one place may not be so at another. If the goods are merchantable at the place where they are when title is taken there is no breach of the warranty of merchantability. *Collins* v. *Tigner*, 5 Del. 345, 60 Atl. 978. *Cf. Perkins* v. *Whelan*, 116 Mass. 542. See WILLISTON, SALES, § 212. But if the goods are not merchantable at the place where title passes, though merchantable at the place the buyer contemplates using them, there has been a breach of the warranty, since merchantable goods have not been furnished, but goods that *would* be merchantable *if* somewhere else. Thus the seller's knowledge of contemplated use elsewhere is immaterial. If the buyer desires a warranty that the goods be merchantable at a place other than that where title is taken, he should not only make known to the seller that the goods are to be used at such other place, but he should rely upon the seller's judgment to furnish goods reasonably fit for such purpose. SALE OF GOODS ACT, 56 & 57 VICT., c. 71, § 14 (1); UNIFORM SALES ACT, § 15 (1). Any such reliance on the seller's judgment was negatived on the facts in the principal case and the only question, therefore, was whether the goods were merchantable in London where title passed. *Congdon* v. *Kendall*, 53 Neb. 282, 73 N. W. 659. See WILLISTON, *op. cit.*, § 280. Since no English drug law was violated, the discussion of whether or not legal salability is an element in merchantability seems

quite unnecessary. When the latter question is squarely raised, it is to be hoped that the English court will renounce its present views and return to those expressed in the Niblett case. *Niblett* v. *Confectioner's Materials Co.*, 125 L. T. R. 552 (C. A.). See 35 HARV. L. REV. 477.

SALES — RIGHTS AND REMEDIES OF SELLER — EFFECT OF NOTICE TO BUYER OF INTENDED RESALE BY UNPAID SELLER. — The plaintiff sold goods to the defendant, retaining a lien for the purchase price. Upon the defendant's default, the plaintiff gave him notice of intention to resell, naming the time, place, and terms of the resale. The defendant made no objection. The plaintiff brought suit for the difference between the resale price and the contract price. In answer, the defendant asserted that the circumstances of the resale made it unreasonable. *Held*, that judgment be entered for the plaintiff for the full amount claimed. *Pride* v. *Marshall*, 131 N. E. 183 (Mass.).

For a discussion of the principles involved, see NOTES, *supra*, p. 870.

SALES — WARRANTIES: REMEDIES FOR BREACH — BUYER'S VOLUNTARY RESCISSION OF SUB-CONTRACT. — The plaintiff sold a horse to the defendant with warranty of age. The defendant resold it without warranty of age. On ascertaining that the horse was older than supposed, the sub-purchaser complained to the defendant, who voluntarily rescinded the sub-contract. In an action brought for the purchase price, the defendant counterclaims for damages in breach of warranty. *Held*, that the counterclaim be dismissed. *Pointer* v. *Robinson*, [1922] 1 W. W. R. 91 (Alta.).

The dismissal of the counterclaim was wrong. The court seems curiously to have confused direct and consequential damages. The defendant counterclaims for damages directly sustained by reason of the failure of the horse to conform to the warranty, and the seller must make good the statements the truth of which he warranted. See WILLISTON, SALES, § 613. The defendant does not claim consequential damage, nor is there any. The existence of the sub-contract and the cause or effect of its rescission are, therefore, immaterial in the present controversy between the original buyer and seller. *Williams* v. *Agius*, [1914] A. C. 510; *Union Selling Co.* v. *Jones*, 128 Fed. 672 (8th Circ.); *Hallam* v. *Bainton*, 60 C. S. C. 325, [1920] 2 W. W. R. 296. The counterclaim should be allowed both at common law and under the Sales Act. See UNIFORM SALES ACT, § 69. See WILLISTON, SALES, §§ 603 *et seq.*

SALVAGE — RECOVERY WHEN REQUESTED SERVICE CONFERS NO BENEFIT. — The steamer D answered the distress call of the steamer M and stood by for two days, making unsuccessful attempts to get a towline aboard. When she had finally succeeded she was dismissed because of the arrival of a vessel sent by the owners of the M to do the towing. The latter ship towed the M to safety. *Held*, that the D was entitled to a salvage award. *The Manchester Brigade*, 276 Fed. 410 (E. D. Va.).

Salvage awards for unsolicited service ordinarily depend on benefit conferred. *The Huntsville*, 12 Fed. Cas. No. 6916 (E. D. S. C.); *The City of Puebla*, 153 Fed. 925 (N. D. Cal.); *The Edward Hawkins*, Lush. Adm. Rep. 515. A requested service stands differently. A request indicates immediate danger, or chance of success not great enough to call forth volunteers. Or again, the request may be the means of communication of the danger; that is, in this last case, possible relief is not in the immediate neighborhood and capable of judging for itself the chances of success, but must be called from a distance. In all these cases in order that salvage will be attempted, and promptly enough, some reward not contingent upon success must be offered. The law recognizes this by permitting a salvage recovery when a requested service has not proved beneficial, if the property is otherwise saved. *The*